

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5026 of 2005

Between:

- 1 S.M. Ahmed Qadri S/o. Late S.M. Murtuza Qadri
- 2 Syed Afzal Ahmed Qadri Sohail S/o. S.M. Ahmed Qadri,
both r/o. H.No. 8-2-311, Banjara Hills, Hyderabad.

..... PETITIONERS

AND

- 1 The Municipality Corporation of Hyderabad, Rep. by its Commissioner, Tank Bund Road, Hyderabad.
- 2 District Collector, Hyderabad District.
- 3 Government of Andhra Pradesh, Rep. by its Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, one more particularly in the nature of a writ of "Mandamus" declaring the action of the 1st respondent in not receiving or considering the application of the petitioners seeking building permission in respect of land admeasuring 948.64 Sq.Yds bearing H.No. 8-2-311, in Sy.No. 129/54(Part) and Revenue Sy.No. 403 corresponding to T.S.No. 3/1 and 3/2 in ward no.10 Block-F of Shaikpet Village, Golconda Mandal, Nandinagar, Banjara Hills, Hyderabad by insisting on the production of a 'no objection certificate' from the District Collector, Hyderabad as being illegal, arbitrary, unconstitutional and contrary to law declared by this Hon'ble Court and consequently direct the 1st respondent to receive consider and process the petitioner application for construction in the said plot without insisting on a no objection certificate from the 2nd respondent and issue sanction for the construction of the building in the said premises and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.S.NIRANJAN REDDY
Counsel for the Respondent No.1: SMT.G.JYOTHI KIRAN
Counsel for the Respondent Nos.2 and 3: GP for Revenue.

The Court at the admission stage made the following :

ORDER:

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This writ petition is filed seeking a Mandamus to declare the action of the first respondent in not receiving the application of the petitioners' seeking building permission in respect of the land of an extent of 948.64 sq. yards bearing H.No.8-2-311 in Survey No.129/54 (part) and Revenue Survey No.403 corresponding to T.S.No.3/1 and 3/2 in ward No.10, Block-F of Shaikpet Village, Golconda Mandal, Nandinagar, Banjara Hills, Hyderabad, by insisting on production of a 'No Objection Certificate' from the District Collector, Hyderabad, as illegal and arbitrary.

When the matter is taken up for consideration, it is represented by the learned counsel for the petitioners as well as the learned standing counsel appearing for the 1st respondent-Corporation and the learned Government Pleader for Revenue appearing for the respondents 2 and 3 that the issue involved in this writ petition is squarely covered by the decision of this Court in *HYDERABAD POTTERIES PRIVATE LIMITED VS. DISTRICT COLLECTOR, HYDERABAD*, wherein it was held as under:

"The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objections(s)

whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any dispute questions of title or the ownership. All that the Commissioner require to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more.”

It is also brought to my notice that in W.A.No.1096 of 2001 filed against the said decision, a Division Bench of this Court held that the Commissioner, while acting under Section 429(1)(a) of the Hyderabad Municipal Corporation Act, 1955 read with relevant building bye-laws acts as a statutory authority and required to make decision on relevant materials and facts and that it is not legally permissible for such authority to base its decisions only on one piece of relevant material and to exclude other relevant material.

Following the above decisions, this writ petition is disposed of with a direction to the first respondent to consider the application of the petitioners in the light of the above decisions and pass appropriate orders in accordance with law. No costs.

(G. ROHINI, J)

Date:14-03-2005

ghn

To

- 1 The Commissioner, Municipal Corporation of Hyderabad, Tank Bund Road, Hyderabad.
- 2 The District Collector, Hyderabad District.
- 3 The Principal Secretary, Government of Andhra Pradesh, Revenue

Department, Secretariat Buildings, Hyderabad.

4 . Two CCs to the Government Pleader for Revenue, High Court of A.P., Hyderabad.(O.U.T.)

5 Two CD copies.